reasonably capable of two constructions the interpretation which does justice is to be preferred to another which is palpably absurd and unjust. Applying sub-section (12) so as to bring about conviction of the innocent and acquittal of the guilty not only defeats the very purpose of the Ordinance, but undermines public confidence in the law and the administration of justice.

Our answer to the question under reference is accordingly in the negative.

Question answered in the negative.

Solicitors: *Shook Lin & Bok; Ranjit, Thomas & Kula.*

PUBLIC PROSECUTOR v. YUVARAJ

[P.C. (Lord Hodson, Lord Guest, Lord Pearce, Lord Pearson and Lord Diplock) July 1, 1969]

[Privy Council Appeal No. 28 of 1968]

Bribery and Corruption — Presumption of corruption against accused — Degree of proof required to rebut presumption — Whether presumption rebutted by a defence which is reasonable and probable or whether it can be rebutted only by proof that defence is on such fact the existence of which is so probable that a prudent man would act on supposition that it exists — No relevant difference between two tests — Test to be applied is balance of probabilities — Prevention of Corruption Act, 1961, ss. 4(a) and 14.

Evidence — Burden of proof — Difference between criminal proceedings and civil proceedings — Burden on accused to rebut a presumption — Test to be applied is that applicable in civil proceedings — Balance of probabilities — Evidence Ordinance, 1950, s. 3.

In this case the respondent had been in the employment of a public body and it was found that a gratification had been paid or given to him. His defence was that it was not paid or given and accepted corruptly. He was acquitted by the President, Sessions Court, Mr. W. Satchithanandhan, who found the agent provocateur who delivered the money to be a witness wholly unworthy of credit, that in respect of the respondent's alleged corrupt motive there was no corroboration of the evidence of the prosecution witness and that the respondent's explanation was not only "probable and credible in all the circumstances of the case" but also "consistent and compatible with the superior probability of his innocence." The acquittal was upheld on appeal to the High Court by Ali J. The following question of law was however reserved for the decision of the Federal Court under section 66 of the Courts of Judicature Act, 1964:

> "Whether in a prosecution under section 4(a) of the Prevention of Corruption Act, 1961, a presumption of corruption having been raised under section 14 of the said Act the burden of rebutting this presumption can be said to be discharged by a defence as being reasonable and probable or whether that burden can only be rebutted by proof that the defence is on such fact (or facts) the existence of which is so probable that a prudent man would act on the supposition that it exists. (Section 3 Evidence Ordinance)."

The Federal Court preferred the description in the first part of the question and held that the burden of discharging the presumption may be discharged by a defence which is reasonable and probable ([1968] 1 M.L.J. 238). On appeal to the Privy Council,

Held, dismissing the appeal: upon the true construction of the Evidence Ordinance, 1950, and the Prevention of Corruption Act, 1961, there is no relevant difference between the two descriptions of the burden of rebutting the presumption of corruption which are contained in the question if "the burden of rebutting this presumption can be said to be discharged by a defence as being reasonable and probable" is understood as meaning "the burden of rebutting such presumption is discharged if the court considers that on the balance of probabilities the gratification was not paid or given and received corruptly as an inducement or reward as mentioned in section 3 or 4 of the Prevention of Corruption Act, 1961."

Semble: The Evidence Ordinance applies to civil and to criminal proceedings alike and the definitions of "proved" and "disproved" draw no explicit distinction between facts required to be proved by the prosecution in criminal proceedings and facts required to be proved by a successful party to civil proceedings. Yet it cannot be supposed that the Evidence Ordinance intended by a provision contained in what purports to be a mere definition section to abolish the historic distinction fundamental to the administration of justice under the common law, between the burden which lies upon the prosecution in criminal proceedings to prove the facts which constitute an offence beyond all reasonable doubt and the burden which lies upon a party in a civil suit to prove the facts which constitute his cause of action or defence upon a balance of probabilities.

Where an enactment creating an offence expressly provides that if other facts are proved, a particular fact, the existence of which is a necessary factual ingredient of the offence, shall be presumed or deemed to exist "unless the contrary is proved", the test is the same as that applied in civil proceedings: the balance of probabilities.

Cases referred to:—

(1) *Dhanvantrai* v. *State of Maharashtra* A.I.R. 1964 S.C. 575.

(2) *Woolmington* v. *Director of Public Prosecutions* [1935] A.C. 462.

(3) *Newis* v. *Lark* (1571), Plow. 412.

(4) *Cooper* v. *Slade* (1858), 6 H.L.C. 746, 772; 10 E.R. 1488.

(5) *R.* v. *Carr Briant* [1943] K.B. 607.

PRIVY COUNCIL appeal heard on May 13, 1969.

Rt. Hon. Sir Dingle Foot, Q.C. and *M.P. Solomon* for the appellant.

L. Blom-Cooper, amicus curiae.

Respondent *ex parte.*

Lord Diplock (delivering the judgment of the Board): The respondent was charged before the Sessions Court, Batu Pahat, with an offence under section 4(a) of the Prevention of Corruption Act 1961, which is in the following terms:—

"If —

(a) any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person,

for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having after the coming into operation of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business;

. . . . he shall be guilty of an offence . . . ."

Section 14 of the same Act provides:—

"Where in any proceedings against a person for an offence under section 3 or 4 it is proved that any gratification has been paid or given to or received by a person in the employment of any public body, such gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned, unless the contrary is proved."

It was proved that the respondent was in the employment of a public body and that a gratification had been paid or given to him. His defence was that it was not paid or given and accepted corruptly. He was acquitted by the Sessions Court and this acquittal was upheld on appeal to the High Court. The following question of law was, however, reserved for the decision of the Federal Court under section 66 of the Courts of Judicature Act 1964:—

"Whether in a prosecution under section 4(a) of the Prevention of Corruption Act, 1961, a presumption of corruption having been raised under section 14 of the said Act the burden of rebutting this presumption can be said to be discharged by a defence as being reasonable and probable or whether that burden can only be rebutted by proof that the defence is on such fact (or facts) the existence of which is so probable that a prudent man would act on the supposition that it exists. (Section 3 Evidence Ordinance.)"

Their Lordships have been informed that whatever answer may be given to this question no further criminal proceedings in respect of the offence charged will be brought against the respondent. The question is in general terms. Its determination does not depend upon the particular facts of the case in which it arose. It is accordingly unnecessary to refer to them, but in justice to the respondent whose name will figure in the Law Reports of Malaysia, it should be stated that in their Lordships' view upon the facts as found by the Sessions Court he was entitled to be acquitted.

The question reserved for the decision of the Federal Court assumes that there is some relevant difference in practical effect, apart from mere phraseology, between the burden described in the first part of the question and that described in the second part. The phraseology appears to have been borrowed from the judgment of the Supreme Court of India in *Dhanvantra* v. *State of Maharashtra.*[1] That was a prosecution under Indian legislation in similar terms to the Prevention of Corruption Act 1961. The Supreme Court of India undoubtedly thought that the two burdens were not the same and preferred the description in the second part of the question, which they regarded as imposing a more onerous burden of proof. The Federal Court of Malaysia, in the judgment now appealed from which was delivered by Ong Hock Thye F.J. (as he then was) appear to have accepted that there was a relevant difference but did not seek to identify it. They preferred the description in the first part of the question and in their formal order they found:—

"THIS COURT DOTH FIND that in a prosecution under section 4(a) of the Prevention of Corruption Act, 1961, a presumption of corruption having been raised under section 14 of the said Act, the burden of rebutting such presumption can be said to be discharged by a defence as being reasonable and probable."

Mr. Justice Ong Hock Thye, in the course of his judgment, reviewed a number of decisions of courts of Malaysia and India (where the Indian Evidence Act is in similar terms) which disclosed a considerable variety of judicial opinion as to the degree of certainty in the non-existence of a fact which must be induced in the mind of the court to entitle a defendant to an acquittal where a statute expressly imposes upon him the onus of proving that it does not exist. It was because of these differences of opinion that special leave to appeal was granted.

In Malaysia, as in India, the law of evidence has been embodied in a statutory code: the Evidence Ordinance. In so far as any part of the law relating to evidence is expressly dealt with by that Ordinance the courts in Malaysia must give effect to the relevant provisions of the Ordinance whether or not they differ from the common law rule of evidence as applied by the English courts. But no enactment can be fully comprehensive. It takes its place as part of the general corpus of the law. It is intended to be construed by lawyers, and upon matters about which it is silent or fails to be explicit it is to be presumed that it was not the intention of the legislature to depart from well established principles of law.

Although in the judgment of the Federal Court and in the cases cited in the course of that judgment there are references to *Woolmington* v. *Director of Public Prosecutions* [2] that authority is not in their Lordships' view germane to the present appeal. It was concerned with an offence at common law, not with an offence as to which there is an express statutory provision altering the ordinary onus of proof which in a criminal case lies upon the prosecution and imposing upon the defendant the burden of proving the existence or non-existence of a particular fact by way of defence.

Where a defendant is charged with an offence under section 4(a) of the Prevention

of Corruption Act 1961, to which section 14 also applied, the onus lies upon the prosecution to prove the first two factual ingredients of the offence viz. (1) that a gratification was paid or given to or received by the defendant and (2) that at the time of the payment, gift or receipt he was in the employment of a public body. Upon proof of these two ingredients the existence of the third ingredient, viz. (3) that the gratification was paid or given or received corruptly as an inducement or reward for doing or forbearing to do an act in relation to the affairs of that public body, is to be presumed "unless the contrary is proved".

This appeal turns solely upon the construction of these words "unless the contrary is proved".

The third ingredient which is to be presumed to exist unless the contrary is proved is a "fact" within the definition of that word in the Evidence Ordinance. That Ordinance provides in section 2 that it "shall apply to all judicial proceedings in or before any court" with certain exceptions which are not material to the present case. Accordingly wherever a Malaysian enactment contains provisions relating to judicial proceedings for a criminal offence any reference in those provisions to the proof of facts must, in their Lordships' view, be construed in the light of any relevant definitions in the Evidence Ordinance.

The relevant definitions are:—

"'proved'; A fact is said to be 'proved' when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

'disproved'; A fact is said to be 'disproved' when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

'not proved'; A fact is said to be 'not proved' when it is neither proved nor disproved."

In view of these definitions it does not matter whether the expression "unless the contrary is proved" in section 14 of the Prevention of Corruption Act 1961 is treated as a requirement that the non-existence of the facts constituting the third ingredient of the offence which are otherwise to be deemed to exist should be "proved" or that the existence of such facts should be "disproved". The requirement of the section is satisfied if, and only if, after considering the matters before it the court "either believes that it (i.e. the corrupt motive) does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist".

The definitions in the Evidence Ordinance do not attempt to spell out explicitly the degree of probability for which a prudent man ought to look before he acts on the supposition that a fact does not exist. As a matter of commonsense this must depend upon the nature of the action contemplated. A degree of probability sufficient to induce a prudent man to spend a dollar on the supposition that a fact did not exist might be insufficient to induce him to risk a million dollars. The definitions, however, contain no express identification of the action which the prudent man is to be assumed to have in contemplation.

In their Lordships' view the relevant action to be taken by the prudent man upon the supposition that a particular fact does or does not exist to which the definitions refer is the determination of the judicial proceedings which will follow from a finding that the fact is proved or disproved as the case may be. The Evidence Ordinance applies to civil and to criminal proceedings alike and the definitions of "proved" and "disproved" draw no explicit distinction between facts required to be proved by the prosecution in criminal proceedings and facts required to be proved by a successful party to civil proceedings. Yet it cannot be supposed that the Evidence Ordinance intended by a provision contained in what purports to be a mere definition section to abolish the historic distinction fundamental to the administration of justice under the common law, between the burden which lies upon the prosecution in criminal proceedings to prove the facts which constitute an offence beyond all reasonable doubt and the burden which lies upon a party in a civil suit to prove the facts which constitute his cause of action or defence upon a balance of probabilities.

The degree of probability of the existence or non-existence of a fact which is required in order for it to be "proved" or "disproved" within the meaning ascribed to those words in the Evidence Ordinance, in their Lordships' view, depends upon the nature of the proceedings and what will be the consequence in those proceedings of a finding that a fact is "proved" or "disproved". If that consequence will be the determination of a civil suit in favour of one party a balance of probabilities is all that is necessary. It is sufficient that upon the evidence the court considers that it is more likely than not that the fact exists or does not exist. This has been the rule at common law since at least the sixteenth century. See *Newis* v. *Lark* [3] cited by Willes J. in *Cooper* v. *Slade.*[4] In criminal proceedings on the other hand, by an exception to the general rule founded upon considerations of public policy, if the consequence of a finding that a particular fact is

proved will be the conviction of the defendant the degree of probability must be so high as to exclude any reasonable doubt that that fact exists.

Generally speaking, no onus lies upon a defendant in criminal proceedings to prove or disprove any fact: it is sufficient for his acquittal if any of the facts which if they existed would constititute the offence with which he is charged are "not proved". But exceptionally, as in the present case, an enactment creating an offence expressly provides that if other facts are proved, a particular fact, the existence of which is a necessary factual ingredient of the offence, shall be presumed or deemed to exist "unless the contrary is proved". In such a case the consequence of finding that that particular fact is "disproved" will be an acquittal, whereas the absence of such a finding will have the consequence of a conviction. Where this is the consequence of a fact's being "disproved" there can be no grounds in public policy for requiring that exceptional degree of certainty as excludes all reasonable doubt that that fact does not exist. In their Lordships' opinion the general rule applies in such a case and it is sufficient if the court considers that upon the evidence before it it is more likely than not that the fact does not exist. The test is the same as that applied in civil proceedings: the balance of probabilities. This was the test which was approved by the Court of Criminal Appeal in *R.* v. *Carr-Briant* [5] a case upon a provision in an English statute in similar terms to that contained in section 14 of the Malaysian Prevention of Corruption Act 1961. For the reasons already indicated their Lordships do not think that, at any rate where such a provision is contained in an enactment, the definitions of "proved" and "disproved" contained in the Evidence Ordinance make any difference between Malaysian law and English law in this respect.

It has been suggested that to satisfy the court that upon the balance of probabilities a fact does not exist puts too high a burden upon a defendant in criminal proceedings where the consequence of a failure to disprove that fact would be his conviction; and in some of the cases cited by the Federal Court without explicit disapproval expressions are used which might be understood as calling for an explanation by the defendant of no greater degree of plausibility than is sufficient to raise a reasonable doubt in the existence of the fact which he must disprove. But this is the test by which in the absence of any statutory provision reversing the burden of proof the court determines whether a fact the existence of which is a necessary ingredient of a criminal offence has been "proved" or "not proved" by the prosecution upon whom the onus lies to prove it. It is merely another way of saying that the prosecution must not only prove the existence of the first two factual ingredients of the offence, viz. (1) that a gratification was paid or given to or received by the defendant and (2) that at the time of the payment, gift, or receipt he was in the employment of a public body, but must also satisfy the court that the circumstances in which the gratification was paid, given or received give rise beyond reasonable doubt to an inference of fact that it was paid, given or received with a corrupt motive. This is the ordinary way in which the prosecution satisfies the burden of proving the motive with which an act was done by the defendant where the onus of doing so lies upon the prosecution. In their Lordships' view it gives no sufficient effect to the reversal of the ordinary onus of proof by an express statutory provision that a fact which constitutes an ingredient of a criminal offence shall be deemed to exist "unless the contrary is proved".

The policy which underlies section 14 of the Prevention of Corruption Act 1961 is, in their Lordships' view, clear. The section is limited to persons "in the employment of any public body". No similar presumption applies to agents of private principals. Corruption in the public service is a grave social evil which is difficult to detect, for those who take part in it will be at pains to cover their tracks. The section is designed to compel every public servant so to order his affairs that he does not accept a gift in cash or in kind from a member of the public except in circumstances in which he will be able to show clearly that he had legitimate reasons for doing so.

In the result upon the true construction of the Evidence Ordinance and the Prevention of Corruption Act 1961, there is, in their Lordships' view, no relevant difference between the two descriptions of the burden of rebutting the presumption of corruption which are contained in the question reserved for the consideration of the Federal Court, if the expression in the first part of the question: "the burden of rebutting this presumption can be said to be discharged by a defence as being reasonable and probable" is understood as meaning "the burden of rebutting such presumption is discharged if the court considers that on the balance of probabilities the gratification was not paid or given and received corruptly as an inducement or reward as mentioned in section 3 or 4 of the Prevention of Corruption Act, 1961".

In their Lordships' understanding it is in this sense that the Federal Court intended to answer the question for they purported to follow the decision in the English case of *Carr-*

Briant. Their Lordships will accordingly report to the Head of Malaysia their opinion that this appeal should be dismissed.

Appeal dismissed.

Solicitors: *Stephenson Harward & Tatham.*

VEERIAH v. MAL SINGH

[F.C. (Ong Hock Thye C.J. (Malaya), Gill F.J. and Pawan Ahmad J.) March 29, 1969]

[Ipoh — Federal Court Civil Appeal No. X.51 of 1968]

Landlord and Tenant — Controlled premises — — One year's notice to terminate monthly contractual tenancy — Whether proper notice — Whether further notice necessary to determine statutory tenancy — Landlord requiring premises for occupation by himself and his family — Greater hardship to tenant — Control of Rent Ordinance, 1956, s. 12(1)(f) & (4) — Civil Law Ordinance, 1956, s. 13(1).

This was an appeal from the decision of the High Court ([1968] 2 M.L.J. 117) dismissing an appeal from the judgment of the Sessions Court requiring the defendant to give up vacant possession of rent-controlled premises of which the appellant was the landlord. Having given a year's notice to determine a monthly contractual tenancy the landlord brought proceedings to recover possession under section 12(1)(f) of the Control of Rent Ordinance. The main ground of appeal by the tenant was that a further notice to determine the statutory tenancy was required.

Held, dismissing the appeal: (1) while a notice for a shorter period than the contractual period of tenancy is not effective to determine the tenancy there is nothing to prevent the landlord from giving a longer notice than contractually required;

(2) as the notice to quit given by the landlord under section 12(1)(f) of the Control of Rent Ordinance, put an end to the contractual tenancy, the tenant therefore was only entitled merely to a personal right of occupation and he was not a tenant in the sense that he had an estate. His statutory tenancy would not be ended by any further notice from the landlord since the statutory tenant could not be thrown out by the landlord except by an order or judgment of court. There was, therefore, no need to determine the statutory tenancy by a further notice to quit under section 12(4) of the Control of Rent Ordinance;

(3) having regard to all the circumstances of the case as were brought out by the evidence, including the question whether other accomodation was available for the landlord or the tenant the learned president rightly found on balance that greater hardship would not be caused by granting an order than by refusing it.

Cases referred to:—

(1) *Meenachi Sundaram & Anor.* v. *Kunjan Pillai* [1955] M.L.J. 128, 129.

(2) *The Queen* v. *County Council of Norfolk* (1891), 60 L.J.Q.B. 379, 380.

(3) *Green* v. *Marsh* [1892] 2 Q.B. 330.

(4) *Lawrence & Sons* v. *Willcocks* [1892] 1 Q.B. 696.

(5) *The King* v. *Commanding Officer, 30th Battalion Middlesex Regiment, Ex Parte Freyberger* [1917] 2 Q.B. 129.

(6) *The King* v. *The Westminster Unions Assessment Committee* [1917] 1 K.B. 832.

(7) *John Waterer, Sons & Crisp, Ltd.* v. *Huggins* (1931), 47 T.L.R. 305, 306.

(8) *Keeves* v. *Dean* [1924] 1 K.B. 685, 697.

(9) *Cartar* v. *S.U. Carburetter Company* [1942] 2 K.B. 288, 291.

(10) *Marcroft Wagons, Ltd.* v. *Smith* [1951] 2 K.B. 496, 501.

(11) *Aitken* v. *Shaw* [1933] S.L.T. (Sh.Ct.) 21.

(12) *The Perak Hauliers Ltd.* v. *The Cycle & Carriage Co. Ltd.* [1962] M.L.J. 7.

(13) *Ponnudurai* v. *Jayatileka* [1965] 1 M.L.J. 131, on appeal [1965] 2 M.L.J. 185.

(14) *Sims* v. *Wilson* [1946] 2 All E.R. 261, 265.

(15) *Harte* v. *Frampton* [1948] 1 K.B. 73, 79.

FEDERAL COURT.

P.P. Dharmananda for the appellant.

F.C. Arulanandom for the respondent.

Cur. Adv. Vult.

Gill F.J.: This is an appeal from a decision of Chang Min Tat J. dismissing an appeal from a judgment and order of the Sessions Court, Ipoh, requiring the defendant-appellant as tenant to give up vacant possession of premises No. 46, Connolly Road, Ipoh, of which the plaintiff-respondent is the landlord. The plaintiff purchased the premises on 21st September, 1963. For some time prior to and since the date of such purchase, the defendant was a tenant of the said premises from month to month on a rental of $70 per month.

It is common ground that the plaintiff's action in the Sessions Court was based on section 12(1)(f) of the Control of Rent Ordinance, 1956 (hereinafter referred to as 'the Ordinance'), and that in compliance with the requirements of that sub-section he had given the defendant not less than one year's notice to quit and deliver vacant possession on 31st March, 1966.

As was stated by Thomson J. (as he then was) in *Meenachi Sundram & Anor.* v. *Kunjan Pillai,*[1] it is well settled law that a letting of a house at a monthly rent raises the presumption of a monthly tenancy. The nature of such a tenancy is described in the following passage in *Hill & Redman's* Law of Landlord and Tenant (14th Edition) at page 40:—

> "A weekly or other periodic tenancy is a continuing tenancy by the week or other period, and does not expire without notice at the end of the first week or period or at the end of each succeeding week or period, there being not a reletting at the beginning of every week or period but a springing interest which arises and which is only determined by a proper notice to quit."

As regards determination of a tenancy generally, the same edition of *Hill & Redman's* Law of Landlord and Tenant at page 41 says:—